

Bruce A Timmons  
June 8, 2021

The Honorable Graham Filler, Chair, House Committee on Judiciary  
Members of the House Committee on Judiciary

### Statement Regarding

**HB 4656** (Cambensy) – Courts: circuit court; twenty-fifth circuit; restore second judgeship. Amends MCL [600.526](#)).

**HB 4656** purports to give Marquette County two circuit judgeships.  
The bill as introduced is not drafted properly to achieve that objective.

**Substitute (H-1)** – by acknowledging that the 25th Circuit now has only 1 judge and that the bill would add a second circuit judgeship subject to the process provided in MCL 600.550 for county approval of the increase – resolves the primary concern I expressed last week.

The following is for future reference to the expected forthcoming Judicial Resources Report (JRR) by SCAO later this year and questions the Committee should consider asking over the summer and asking SCAO to respond to it in that JRR.

Until 1998, Supreme Court recommendations to the Legislature regarding judgeships were based on raw caseload data that did not differentiate between a traffic ticket paid at the clerk's desk from a complicated class action PPB lawsuit. The Legislature created the Trial Court Assessment Commission in 1996 that, on the basis of a time study, developed a weighted caseload formula that was a vast improvement in gauging the workload of local trial courts.

SCAO later conducted time studies in 2000 and 2006 that led to updated case-weight formulae that were used in Judicial Resource Reports throughout the decade. In 2010 SCAO created the Judicial Needs Assessment Committee (JNAC) that resulted in a new weighted caseload formula that included activity by law clerks and quasi-judicial officers who performed judicial functions. That has been the basis of JRR recommendations this past decade. But---

**A. How many of the judgeships that a series of statutes enacted during 2011-12 were designed to eliminate by attrition have now, in fact, been eliminated?**

Prior to 2011-12, almost half of counties in Michigan had the probate judge hearing "family court" (Family Division of Circuit Court) matters, primarily due to concurrent jurisdiction or family court plans in a county. Many of the proposed reduction in judgeships were the sole district judgeship in the county, with its jurisdiction and power transferred to the Probate Court.

**Q:** What impact have those eliminated judgeships had on the distribution of cases and caseload between the circuit judge(s) and probate judge in each affected county?

**Q:** More specifically, what impact has the elimination of a district judgeship on the functioning of the family division and which judges now hear family court matters? Has the addition of district court cases to the probate judge's responsibility caused a shift of family court matters back to the circuit judge or has the probate judge been able to carry the added load?

**Q:** In counties in which a judgeship was eliminated, have courts had to add (and the counties pay for) additional Quasi-Judicial Officers (**QJOs**) to assist with handling the caseload?

**Q:** Has the elimination of a judgeship – contrary to the premise of Article VI of the Michigan Constitution that judicial decisions are to be made by elected judges – resulted in more judicial decision-making being transferred from elected judges to non-elected QJOs (and the transfer of costs from the state (salary of judge) to the county (which pays for QJOs)?

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**B.** As has been claimed with the reversal of eliminated judgeships in Menominee (district) and as now proposed in Marquette (circuit), **does the passage of time (an intervening decade) warrant a revisiting for those longer-range eliminations that have not yet occurred?**

**Q:** Have caseloads in any of those circuits and districts changed significantly over time to warrant reconsideration of SCAO's 2011 JRR?

**Q:** Has the development of specialty courts in any of these affected counties – dockets which require more of a judge's time than a typical case – impacted the assumptions of the 2011 JRR as to what judgeships should be eliminated?

*SCAO may report back that its 2011 JRR recommendations remain sound and defensible even after an intervening decade – but if the Legislature does not ask, it will not get the information it deserves.*

**C. Caution advised** when evaluating the next SCAO JRR recommendations with its **Stratum 2** category of 28 counties (listed on page 40 of the 2019 JRR) regarding the “mid-sized” counties with populations mostly under 77,000 (16) but as low as 21,000, with 10 under 64,000 with a single circuit judge, lumped with larger “mid-sized” counties that have much larger populations (6 ranging from 136,000 to 181,000) that have 3 or 4 circuit judges (Calhoun, Monroe, Berrien Jackson, St. Clair, and Livingston). [Population figures are from actual 2010 census data.]

Averages within Stratum 2 (caseload and QJOs) adversely affect counties on the smaller end of this category and unfairly skew how those counties dispose of cases compared to the larger mid-sized counties. The larger counties in Stratum 2 generally have more resources (funding) and staff (law clerks and referees) than do the counties under 64,000. But the average number of judges needed in each county assumes the latter have the same assistance of QJOs for disposing of cases. Currently Marquette is the largest county served by a single circuit judge.

**D. Separate from the issue of elimination of judgeships**, there are two other basic questions:

1. After twenty years, how is the “**family court**” functioning today? Which judge or judges are handling that caseload? While the family court is part of Circuit Court, in how many counties is the probate judge covering the family court caseload? In counties with multiple circuit judges where 1 or more circuit judges decide family court cases, how many of those judges are the most recently elected to that bench – reflecting a concern raised by skeptics at the time the family court was created that the junior-most and least experienced judge would get those cases)? (There are clear exceptions where a circuit judge has served several years by choice.)

2. When will stakeholders, including the Supreme Court, consider a constitutional amendment that provides more flexibility in court structure, instead of asking voters to elect a probate judge who will hear more circuit (family court) and district court cases than estate or mental health cases? We have about 100 different court systems in Michigan that no one can fully describe. None is readily available to the public, including concurrent jurisdiction plans approved by the Supreme Court. SCAO has a copy of each but those are not FOIA-able or posted on a website.

**E.** The Legislature should consider a single clean-up bill to delete “elimination” provisions from those circuits and districts where the contingency has occurred and the judgeship has been eliminated. That would make it clearer for legislative staff, LSB, and the public to learn what the statutorily authorized number of judges is for each circuit and district and what circuits and districts still have pending reductions. Available lists may indicate to which court a judge is assigned but do not specify the judgeship to which many judges were elected (or appointed) – in other words, a lack of transparency for the public – and for the Legislature.

Respectfully.

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